

PUBLIC NOTICE

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890
(<http://www.saw.usace.army.mil/wetlands/regtour.htm>)

Action ID No. 200400138

December 4, 2003

PUBLIC NOTICE

Edward and Robert Richards, 1136 Manor View Court, Lynchburg, Virginia 24053 has applied for a Department of the Army (DA) permit TO CONSTRUCT A MARINA WHICH INCLUDES 50 WET SLIPS, 540 DRY SLIPS, DOCKAGE, BASIN AND CANAL EXPANSION, TRAVEL LIFT, SHIP'S STORE, WORKSHOP, PARKING AND 1.25 MILES OF NEW CHANNEL IN EASTMOUTH BAY, AT 401 BAYVIEW DRIVE, ON THE NORTH SIDE OF HARKER'S ISLAND, CARTERET COUNTY, NORTH CAROLINA.

Please review the attachments provided by the applicant and the North Carolina Division of Coastal Management (CAMA Major application) for a description of the site and the proposed project. Plans submitted with the application show the proposed limits of the work and facility.

The purpose of the work is to provide a commercial marina for public use. Plans showing the work are included with this public notice.

The applicant has determined that the proposed work is consistent with the North Carolina Coastal Zone Management Plan and has submitted this determination to the North Carolina Division of Coastal Management (NCDCM) for their review and concurrence. This proposal shall be reviewed for the applicability of other actions by North Carolina agencies such as:

- a. The issuance of a Water Quality Certification under Section 401 of the Clean Water Act by the North Carolina Division of Water Quality (NCDWQ).
- b. The issuance of a permit to dredge and/or fill under North Carolina General Statute 113-229 by the North Carolina Division of Coastal Management (NCDCM).
- c. The issuance of a permit under the North Carolina Coastal Area Management Act (CAMA) by the North Carolina Division of Coastal Management (NCDCM) or their delegates.
- d. The issuance of an easement to fill or otherwise occupy State-owned submerged land under North Carolina General Statute 143-341(4), 146-6, 146-11, and 146-12 by the North Carolina Department of Administration (NCDA) and the North Carolina Council of State.

e. The approval of an Erosion and Sedimentation Control Plan by the Land Quality Section, North Carolina Division of Land Resources (NCDLR), pursuant to the State Sedimentation Pollution Control Act of 1973 (NC G.S. 113 A-50-66).

The requested Department of the Army (DA) permit will be denied if any required State or local authorization and/or certification are denied. No DA permit will be issued until a State coordinated viewpoint is received and reviewed by this agency. Recipients of this notice are encouraged to furnish comments on factors of concern represented by the above agencies directly to the respective agency, with a copy furnished to the Corps of Engineers.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The District Engineer's initial determination is that the proposed project would not adversely impact EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service.

This application is being considered pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act of 1899 (33 U.S.C. 403). Any person may request, in writing within the comment period specified in the notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this site is not registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register is the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently, unknown archeological, scientific, prehistorical, or historical data may be lost or destroyed by work under the requested permit.

The District Engineer, based on available information, is not aware that the proposed activity will affect species, or their critical habitat, designated as endangered or threatened pursuant to the Endangered Species Act of 1973.

The decision, whether to issue a permit, will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that may be expected to accrue from the proposal must be balanced against its foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore decided by the outcome of the general balancing process. That decision should reflect the national concern for both protection and use of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects of it. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards and flood plain values (according to Executive Order 11988), land use, navigation,

shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the placement of dredged or fill materials in waters of the United States, a permit will be denied if the discharge that would be authorized would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer decides that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials; Indian Tribes and other interested parties to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to decide whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to decide the need for a public hearing and to decide the public interest of the proposed activity.

Written comments pertinent to the proposed work, as outlined above, will be received in this office, Attention: Mr. Henry Wicker, until 4:15 p.m. January 5, 2004, or telephone (910) 251-4930.

// 9. NARRATIVE DESCRIPTION:

The property is a 20.47-acre tract of land located on the north side of Harker's Island, at 401 Bayview Drive. The site consists of 10.6 acres of upland adjacent to Eastmouth Bay, and 9.9 acres of wetlands and canal system within the bay. The north side of Harker's Island is riddled with mosquito ditching, and this property is no exception. There are 4 unimproved mosquito ditches on the north east side of the property, and the main ditch to the west that was improved to create a boat basin and canal prior to the onset of the CAMA in 1978. Several canals in this same area were likewise expanded during the years preceding the CAMA.



there are areas of high coastal sufficient to be designated as interact with the waters of the bay. upland, cleared, and previously

The property line to the west is located in the center of a less improved ditch. The north side of the tract is primarily vegetated with Spartina alterniflora along the ditches, for a width of approximately 800'. Peninsulas created from the spoil of the original canal excavation line both sides of the canal. A narrow fringe of Section 404 Wetlands lines the peninsulas and the south side of the mosquito ditches. Landward of this fringe, marsh that do not contain soils Section 404 wetlands, and yet do The remainder of the property is disturbed.



The upland portion of the tract averages +5' msl, and is vegetated with common grasses. As stated above, the basin, canal, and residence were developed prior to 1978. The 1978 aerial photograph shows 15 trailers located on the peninsula area around the basin. According to the records, the basin and canal were dug in anticipation of a federal project to be located within Eastmouth Bay. This project never came about. By the 1984 photography, most of the trailers were no longer present. The 1989 photography shows the evolution of the site to a boat construction facility, and in fact there is a vessel under construction shown on the photo. The 1995 photography shows this operation continuing, and what appears to be the same vessel under construction. By the 2000 photograph, and continuing to the present, the commercial ventures are abandoned, and the single residence and relic concrete pads from the previous businesses are all that remain.



Field Investigation Report

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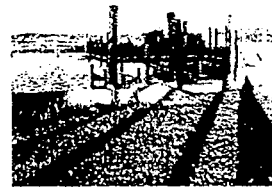
During the years, previous property owners have engaged the review agencies in various requests. There have also been several violations at this location. An application was submitted and circulated to the agencies during this time period requesting the construction of a new boat manufacturing facility, to include excavation and fill of wetlands, facility buildings, and bulkheading. After receiving negative agency comments, the application was retired on August 25, 1988. Also during the mid 1980's, there were several General Permits issued to Mr. Lang for maintenance excavation of the canal and basin, a boat ramp, bulkhead, subdivision, and pipeline of sorts. There is no indication on file as to which of these permits were utilized.



Currently, there is a residence with a septic tank, boat basin and canal with failing bulkhead, and a recently constructed small, private dock.



The request on the table currently has undergone review during the SEPA process via Environmental Impact Statement. The Record of Decision was issued on August 22, 2002, and since that time the applicant has finalized the CAMA Permit Application.



The proposal is for the construction of a marina, comprised of 50 wet slips, 540 dry stack, with a boardwalk around the perimeter of the basin, and floating and fixed dockage within the basin. Boats 25' to 40' in length are intended to use the facility. The basin is proposed for expansion into the high ground and high marsh, as is the canal. Additionally, excavation of a new, 7100' channel is proposed, leading from the canal through Eastmouth Bay, to the deeper waters located within Back Sound.

Eastmouth Bay is not designated as a Primary Nursery Area. The waters are open to the taking of shellfish, with a documented historic use, according to the NC DMF. Approximately 1/2 mile to the west of the project site within the eastern portion of Westmouth Bay, there is a sizeable shellfish garden, operated by Carolina Atlantic Seafood Company. The bay has a considerable population of Zostera marina. The waters carry a stormwater classification of SA. The Carteret County Land Use Plan has classified the area as Limited Transition, with all AEC's being classified as Conservation. The width of the bay is approximately 900' across at the mouth of the canal, increasing as one heads east.



The submitted plats show a section of wetlands on the peninsula to the west labeled as "marginal coastal wetlands." These areas are in transition, and while presently being supported mostly by stormwater ponding, they are

increasingly flooded by the canal to the west. The wetlands are not sufficiently active to be considered jurisdictional under the CAMA presently. They are noted on the plat at the request of the Division because of the long-term nature of major permits.

On June 04, 2002, two representatives of the Division of Coastal Management performed informal sampling of Eastmouth Bay in the vicinity of the proposed access channel. The results are as follows:

The near shore environment immediately east of the mouth of the channel consists of peat and sand with a dense root mat and rhizomes. Juvenile flounder were seen. Leaving the shore, the root mat was less dense and the substrate had 4" to 6" of silt over sand. Slightly further, from approximately 40' offshore to 130' offshore at this same location the substrate became progressively more organic, with thicker layers of fines. Marsh root mat, SAV rhizomes, sea squirts, parchment tube worms, and oyster hash were common.

Relocating to 100' east of the channel and moving in 10' segments off shore, the near shore area was sand and shell, and beginning at approximately 20' offshore, the substrate was siltier with peat, mussels, SAV rhizomes, parchment tube worms. At about 60' offshore, there were live oysters. At about 105' offshore, there was indication of a kicked channel area, with 1' of silt over a vegetative root mat. This deepened until approximately 120', and shallowed to 130' where it was clearly the opposite bank of the kicked area. At



approximately 145' from shore, there were submerged grass beds.



Moving to the second green marker in Eastmouth Bay, there were SAV's within a 50' radius of the marker. This vegetation was lush, approximately 2' in length. At this point, the water depth was approximately 2' at normal low water. The substrate was firm but silty.

There were numerous crab pots within Eastmouth Bay. Many boats passed during the field investigation, despite the fact that the visit started 2 hours before low tide, and continued almost until low tide. Extreme turbidity was caused by each passing vessel sufficient to block all visibility. Approximately 1000' from the mouth of the canal, all evidence of kicking terminated.

On October 16, 2003, a field inspection was made to confirm changes made to the application and plats. This visit was made at 8:00 AM, which was during the low tide phase at the site. Several 17' and 19' skiffs passed from Westmouth Bay through Eastmouth Bay heading to Back Sound.

Aerial photography through the years confirms the continued and dynamic presence of submerged vegetation within Eastmouth Bay. The aerials also reveal the fine composition of the sediments, i.e., the 1995 photo shows a very turbid stream from the passing of a boat.

In July of 2001, the applicant had benthic samples taken 10' and 30' north and south of the proposed channel centerline. A total of 128 sites were sampled. Zostera marina was found at 5% of the sites, 3% within the proposed channel. The results are attached. The applicant took dissolved oxygen levels as part of the SEPA process, which revealed 4.33 to 5.96 mg/l within the canal during a 2 week time period between August 30 and Sept 15 (enclosed).

The specific proposal for this project is as follows:

In the general vicinity of the existing concrete pads, the applicant proposes to construct two dry stack boat storage buildings, one to house 240 boats and the other to house 300 boats. There will be a workshop for minor maintenance and repairs, a ship store, 6 restrooms, showers, offices, fuel service, and a wastewater pumpout. Another 4 restrooms will be provided within a building located on the peninsula to the west of the basin. The fuel dispenser, holding tank, and pumpout are shown adjacent to the bulkhead in the southeast corner of the basin. Asphalt parking is proposed adjacent to Island Road and along the peninsula to the west. A total of 140 spaces are provided.

The proposal is to enlarge the existing septic system and pump across the street to another septic field. This plan has received Carteret County Health Department approval. Approximately 2375 gallons per day of potable water will be required for the marina operation. This will be obtained from the local municipal system.

The existing, failing bulkhead is to be removed. The existing basin, 150' x 105', will be enlarged to 285' x 172'. The existing 860' x 75' canal will be widened on both sides for the end result of a canal 118' in width. The basin and canal will be stabilized with a new vinyl or concrete bulkhead, totaling approximately 2700' in length. A "drop zone" with travel lift to launch the boats from the dry stack facility is to be located on the east side of the basin. This area will be approximately 260' x 60' on average, and will abut the bulkhead. Besides the "drop zones" located within the basin, there are floating docks for offloading and temporary mooring. The 7' wide floats total 120' in length, and the 6' wide floats total 590' in length. There are 25 fixed finger docks proposed in the basin and canal, averaging 4' x 20', with 75 associated mooring pilings. Within the basin, 13 slips are proposed, and within the canal 37 slips. The slips will accommodate boats from 25' to 40' in size.

There are 6 walkways proposed from the parking lot to the marina, averaging 45' to 50' long, and 6' in width. A drip-thru boardwalk is proposed for a length of 1567' around the perimeter of the basin, with a width of 6'. Overnight dockage will be allowed within the basin and canal with a lease requiring a locked head.

Hydraulic dredging of the basin and canal are requested from the existing depth of -3.4' to -4' nlw to a finished depth of -5' nlw. This area will be excavated with a box cut design for equal bottom and top cut widths. A spoil area will be constructed in the area of the proposed

dry stack buildings, with approximate dimensions of 350' x 310', with 7.5' of freeboard. This facility will have the capacity for approximately 30, 139 cubic yards of material.

A smaller spoil area for future maintenance is proposed on the peninsula to the west of the basin. This area will be approximately 310' x 60' with 7.5' of freeboard, and will accommodate approximately 5167 cubic yards of material.

From the mouth of the existing canal for a distance of approximately 150', there is an unauthorized, informally excavated channel. Extending for another 1000'± there is a less defined area that shows evidence of prop wash. Aerial photography and field inspections indicate this feature to average 9' to 15' in width. Current soundings show approximately -2' at nlw.

The applicant is proposing to excavate a new channel from the mouth of the canal for a distance eastward of 7100'. This feature is intended to connect to the existing -5' bottom contour within Back Sound. The application states that current soundings within this area average from -2.4' nlw to -3.9' nlw. The request is for a consistent bottom depth of -5' nlw. The requested top width of the new channel is 40' for the entirety of the distance, with bottom widths ranging from 19'-33'. Approximately 21,700 cubic yards of material will be removed to accomplish this, with the anticipation of another 3900 cubic yards every 5 years. This material will be removed hydraulically and deposited into the large spoil area initially, using the maintenance area after the initial dig. It is anticipated that this spoil will be removed from the site after drying. Twenty-six channel markers and 4 no-wake signs are proposed along the 7100' channel.

The NC Division of Water Quality has approved a Stormwater Management Plan for this proposed development. No Sedimentation/Erosion Control Plan has yet been submitted to the Division of Land Resources.

10. ANTICIPATED IMPACTS:

The upland portion of this marina facility will require the grading and filling of 7.4 acres, with a finished impervious area totaling <29% within 75' of Eastmouth Bay, and 25% overall. Approximately 5135 sf of high marsh will be excavated by the widening of the canal, which will also require the conversion of approximately 30, 749 sf of high ground to an open water system. Approximately 2360 sf of low marsh will be excavated for the basin expansion. This marsh is landward of the existing bulkhead that is functioning as a breakwater. The remainder of the proposal will cause the filling of approximately 1600 sf of high marsh. The area shown as marginal wetlands will be filled, but is not presently considered to be interacting with the estuarine system. The canal, basin, and new channel will require the disturbance of approximately 323,000 sf of shallow bottom habitat within the system, 39,000 sf of which is maintenance excavation within the existing canal and basin. The docking system will shade approximately 6380 sf of newly created open water system. The 7100' of new excavation through Eastmouth Bay is clearly proposed within SAV habitat, although it is possible that the activity may bypass the actual vegetation at the time of dredging. While the

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proposed channel is located within active shellfish waters, the actual channel cut may not disturb the resource. Turbidity will be an issue during excavation, as the bay substrate is very fine and lends itself to re-suspension easily. Turbidity may also be a continuing issue as impatient boaters on busy weekends utilize the shallower areas outside of the channel during sufficient and semi-sufficient tides. This use could cause the ongoing re-suspension of fines into the water column with the associated changes to temperature, sunlight penetration, oxygen availability, etc. The project itself has the possibility to greatly increase the boating use of Eastmouth Bay, with the addition of 590 boats. This impact extends to Cape Lookout, the selling destination of the project, with the addition of several hundred weekend visitors. Parking may be a problem, as the County requirements are .6 spaces for each wet or dry slip, and 1 slip per employee. This formula would indicate the need for 354 slips plus those for employees. The proposal, which maximizes available space, allots 140 spaces.

This project is proposed for phasing over an 8-year period.



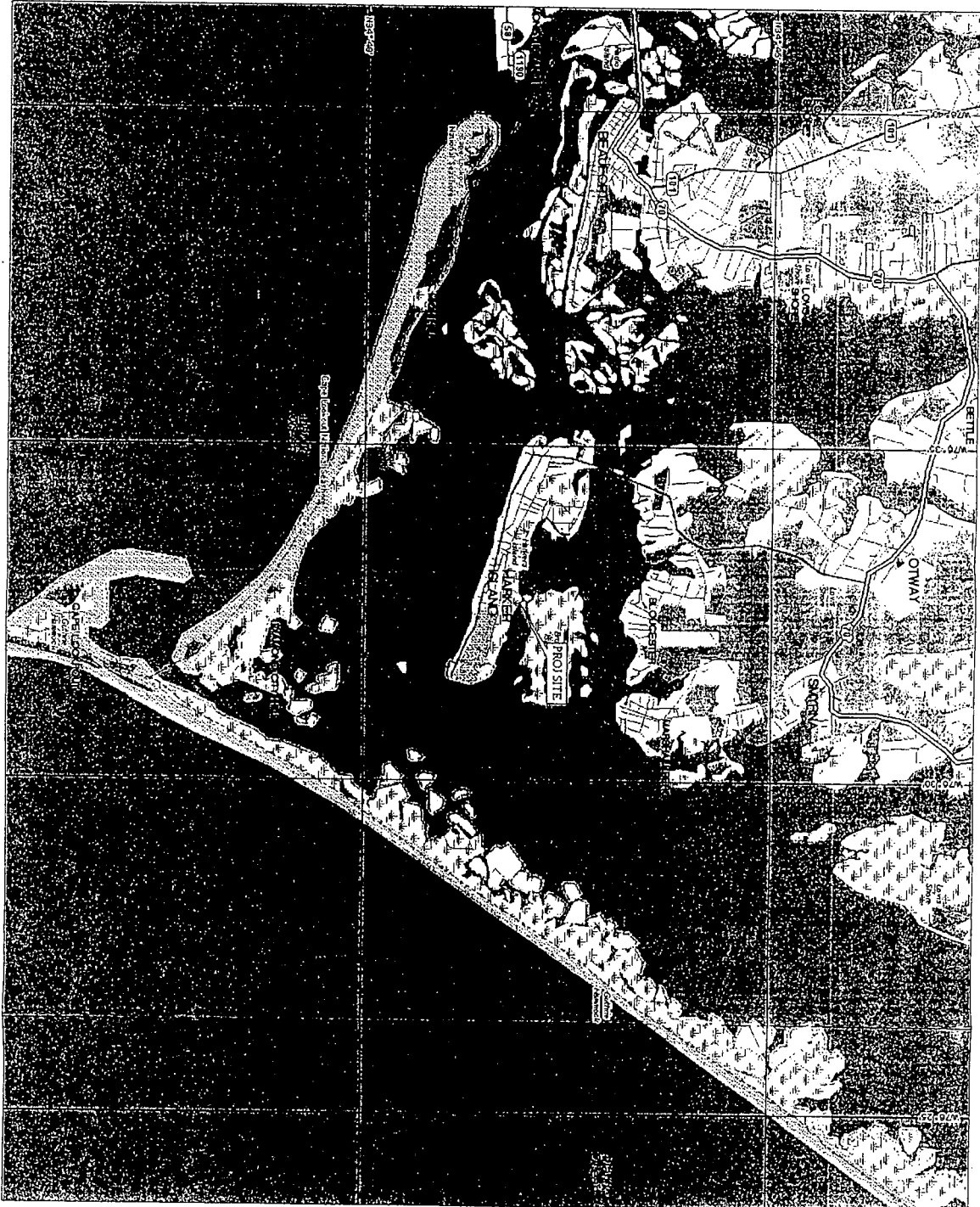
APPLICANT
EDWARD F. RICHARDS AND
ROBERT D. RICHARDS, JR.
PROJECT
CAPE LOOKOUT MARINA, INC

TRC

500 CLEMWOOD AVE
RALEIGH, NC 27603
(919) 828-3150

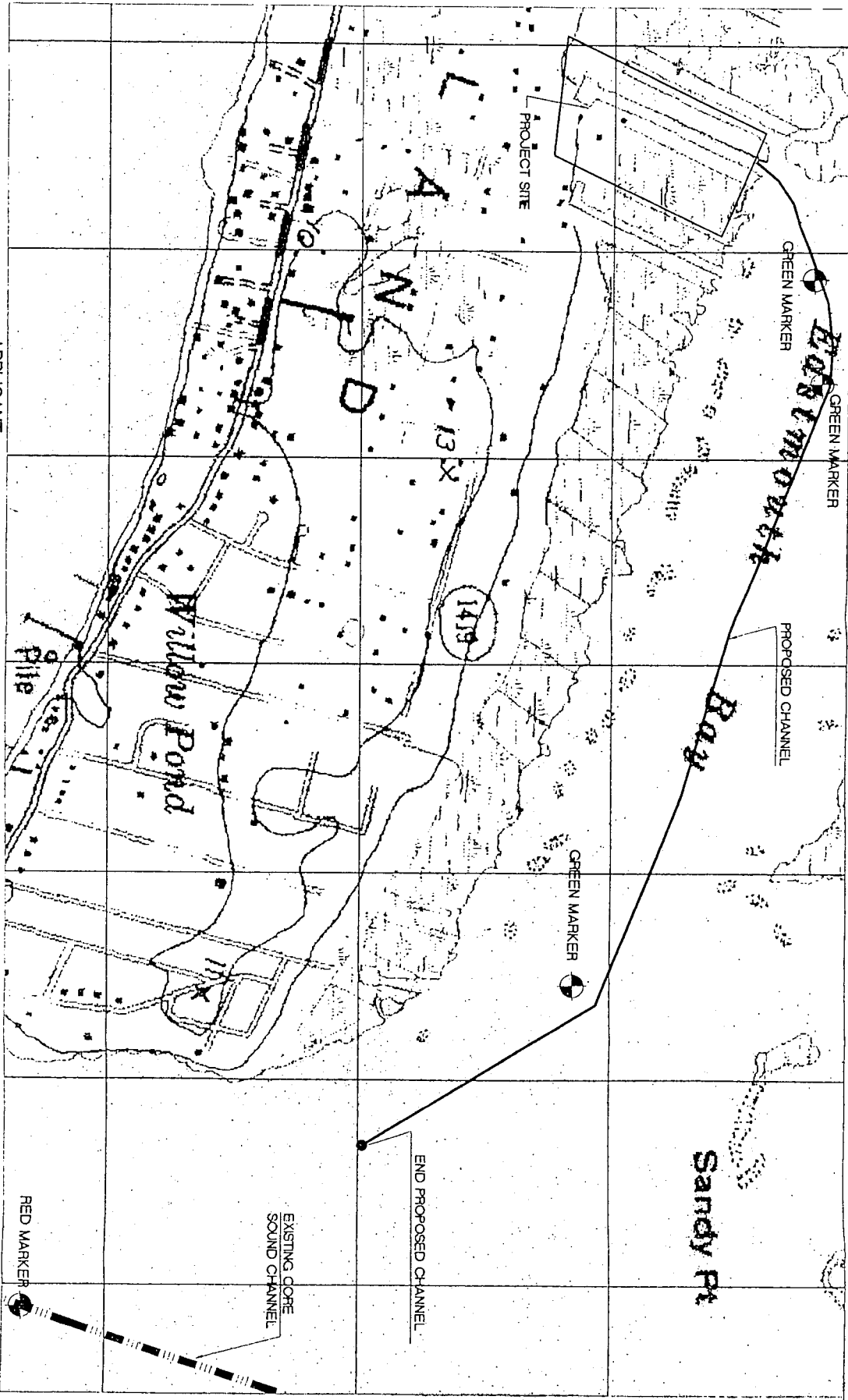
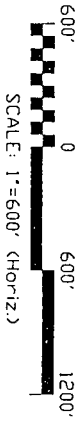
CAPE LOOKOUT MARINA
HARKER'S ISLAND, NC

OVERALL
VICINITY MAP



CAMA SUBMITTAL N/20/03

EXHIBIT:
FIG 1
DATE: 10/17/01



TRC

500 GLENWOOD AVE
RALEIGH, NC 27603
(919) 828-3150

APPLICANT
EDWARD F. RICHARDS AND
ROBERT D. RICHARDS, JR.

PROJECT
CAPE LOOKOUT MARINA, INC

CAMA SUBMITTAL 10/20/03

CAPE LOOKOUT MARINA
HARKER'S ISLAND, NC

EXISTING CHANNEL AND
PROPOSED CHANNEL EXTENSION

EXHIBIT
FIG 2
DATE: 10/17/01

EAST MOUTH BAY

AREA

BY DMO
878,980 SF +/-
20.13 AC +/-
TO THE LINE

REFERENCES

DB 648 P2 633
MR 11 20 10

LEGEND

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 02 = 50% (1.1 hours)
 03 = 25% (0.5 hours) HSP-65-17
 04 = 12.5% (0.25 hours)
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WETLANDS DATA

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101	66	W. J. B. J.
101	67	W. J. B. J.
101	68	W. J. B. J.
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101	99	W. J. B. J.
101	100	W. J. B. J.
101	101	W. J. B. J.
101	102	W. J. B. J.
101	103	W. J. B. J.
101	104	W. J. B. J.
101	105	W. J. B. J.
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101	107	W. J. B. J.
101	108	W. J. B. J.
101	109	W. J. B. J.
101	110	W. J. B. J.
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101	112	W. J. B. J.
101	113	W. J. B. J.
101	114	W. J. B. J.
101	115	W. J. B. J.
101	116	W. J. B. J.
101	117	W. J. B. J.
101	118	W. J. B. J.
101	119	W. J. B. J.
101	120	W. J. B. J.
101	121	W. J. B. J.
101	122	W. J. B. J.
101	123	W. J. B. J.
101	124	W. J. B. J.
101	125	W. J. B. J.
101	126	W. J. B. J.

* THE LINE FROM SOUTH WEST CORNER TO POINT NUMBER 1
N 89°11'30"E 100.10'

* THE LINE FROM SOUTH EAST CORNER TO POINT NUMBER 2
S 89°11'30"E 100.10'

TOTAL TRACT AREA

BY DWD
870,000 SF +/-
20.13 AC +/-
TO THE LINE

UPLAND AREA

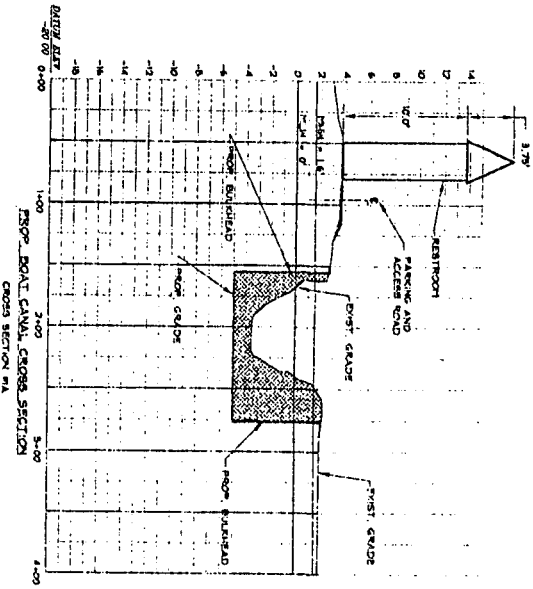
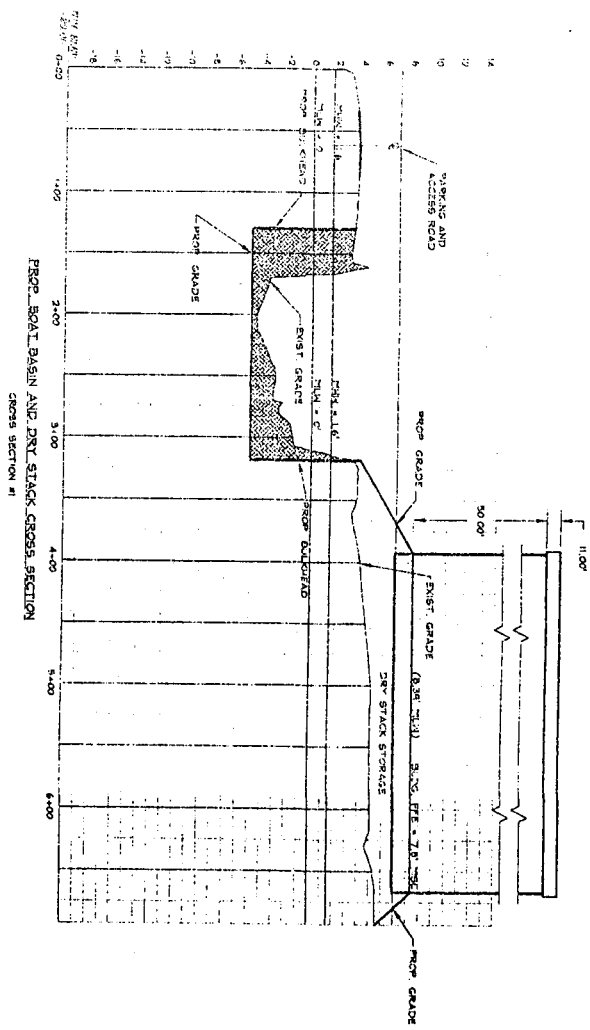
447.128 SF +/-
10.36 AC +/-

THIS CERTIFIES THAT THIS COPY OF THIS PLAN ACCURATELY REFLECTS THE BOUNDARY OF THE AIRPORT OF SECTION 404 OF THE CLEAN WATER ACT PURSUANT TO THE 1987 CLASS OF ENGINEERS REGULATION DELINEATING MINIMUM AS DETERMINED BY THE UNDERSTANDING ON THIS DATE UNLESS THERE IS A CHANGE IN THE LAW OR OUR PUBLISHED REGULATIONS. THIS DETERMINATION OF SECTION 404 JURISDICTION MAY BE HELD UPON FOR A PERIOD OF FIVE YEARS ON THIS DATE.

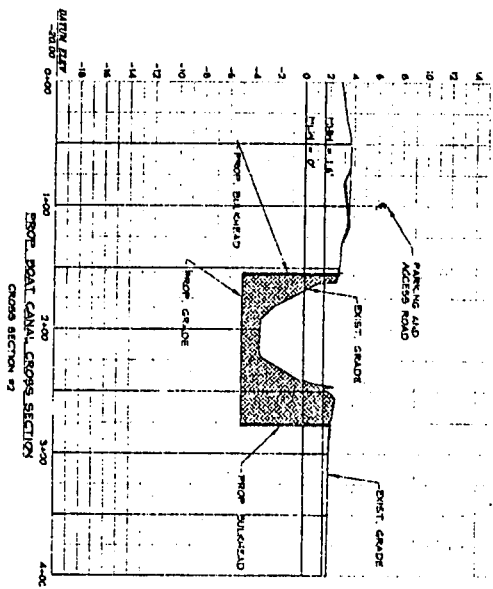
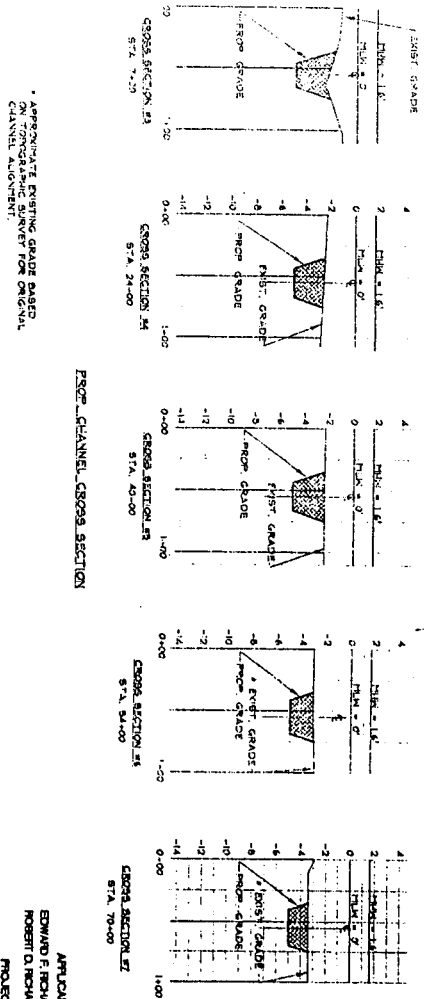
U.S. ARMY COURT OF MILITARY APPEALS
DATE 2-27-60

IRLANDS SURVEY OF
- LOTS 35-41, EARL DAVIS S/D
HARKERS ISLAND, NORTH CAROLINA

ISLAND NORTH CAROLINA					
TOWNSHIP	WATER FRONT	COUNTY	TOWNSHIP	STATE	
CLIENT	NO. 203 BROADWAY		DATE	10/24/90	SCALE 1" = 1' 0"
ADDRESS	1130 W. 20th ST		PROJECT	30049	JOBS: 5002
	NORFOLK, VA 23513		TAX PARCEL S:	7341-0001	
PHONE	810-250-1321		LANDING ZONE	5-1-7	7341-0003 S. 9/2"
ATLANTIC COAST PROFESSIONAL SURVEYING, P.A.					
OFFICE: 752-764-2031		PO BOX 331, WAREHOUSING TRAIL, NC 28581		FAX: 752-728-5110	



SEE FIG 5 FOR PLAN VIEW



APPROXIMATE EXISTING GRADE BASED ON PHOTOGRAPHIC SURVEY FOR ORIGINAL CHANNEL ALIGNMENT.

APPLICANT
EDWARD F. RICHARDS AND
ROBERT D. RICHARDS, JR.
PROJECT
CAPE LOOKOUT MARINA, NC

TRC Triangle, Inc.

CROSS SECTIONS

CAPE LOOKOUT MARINA

